



STATE OF NEVADA
COMMISSION ON ETHICS
<http://ethics.nv.gov>

Wednesday, December 13, 2006
9:00 a.m.

Nevada Department of Education
2nd Floor Conference Room
1820 E. Sahara Avenue
Las Vegas, Nevada 89104

MINUTES

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics.
A verbatim transcript of the open session proceedings, prepared by a certified court reporter,
is available for inspection at the Commission offices in Carson City and Las Vegas.

Commission Members Present:
Caren Jenkins, Chairman;
Randall Capurro; William Flangas;
George Keele, Esq.; Jim Kosinski, Esq.

Commission Members absent due to their participation in the Panel Proceeding:
Timothy Cashman; Rick Hsu, Esq.

Commission Member Absent and Excused:
Mark Hutchison, Esq., Vice Chairman

Commission on Ethics Staff Present:
L. Patrick Hearn, Executive Director
Adriana G. Fralick, Esq., General Counsel
Matt Di Orio, Senior Investigator
Tami DeVries, Research Analyst

Others Present:
Harold Keaton, Member, Lincoln County Board of Commissioners
Witnesses for RFO 06-14: Steve Chouquer, Dylan Vern Frehner, Art Cameron
Wendy Rudder, Deputy Public Administrator, Lincoln County
Brett Whipple, Esq., Counsel for Wendy Rudder
Witnesses for RFO 06-57: Philip Dunleavy, Tina Osborn, Joshua Nay,
Britney Nay, Nancy Escobedo

Chairman Jenkins called the meeting to order at 9:00 a.m., Wednesday, December 13, 2006.

Agenda Item 1 – Open session to approve the minutes of the October 11, 2006, Commission meeting

Chairman Jenkins opened the agenda item to approve the minutes of the October 11, 2006, Commission meeting. Commissioner Keele requested two corrections, and moved to approve the minutes as amended. Commissioner Flangas seconded the motion. The motion was put to a vote and passed unanimously. Commissioner Kosinski abstained from the vote, because he was not present at the October 11, 2006, meeting. The agenda item was closed.

Agenda Item 2 – Request for Opinion 06-14

Open session to hear testimony, receive evidence, deliberate, and render an opinion relating to a Request for Opinion submitted pursuant to NRS 281.511 (2)(b), alleging that certain conduct of Harold Keaton, Member, Lincoln County Board of Commissioners, violated the provisions of NRS 281.501(4).

Chairman Jenkins opened the agenda item and denied a motion to dismiss. Mr. Keaton requested the motion to dismiss based on the letter dated November 21, 2006, addressed to the Commission from Dylan V. Frehner, the requestor of this Request for Opinion. In his letter, Mr. Frehner acknowledges that his office had a “misunderstanding of the facts” when they submitted the ethics complaint against Mr. Keaton, and requested that the Nevada Commission on Ethics dismiss the remaining charges against Mr. Keaton.

Chairman Jenkins proceeded to explain the hearing process and then asked Executive Director, Pat Hearn, to provide an overview of the request for opinion. Mr. Keaton then made his opening statement.

The first witness, Steve Chouquer, was called to testify followed by a five-minute recess. The Commission reconvened testimony by calling the next witness, Dylan Frehner, followed by Art Cameron and Harold Keaton.

Following testimony and deliberations, Commissioner Flangas moved the Commission find that Mr. Keaton violated the provisions of NRS 281.501, subsection 4, in that he failed to disclose and then voted on a matter at the Lincoln County Commission Meeting held on September 19, 2005. Commissioner Kosinski seconded the motion. After further discussions, the motion was put to a vote and passed four-one, with Commissioner Keele voting no.

The Commission then deliberated as to whether the violation was willful. Commissioner Kosinski moved the Commission find that the violation was willful because Mr. Keaton knew or

should have known that his contact violated the provisions of NRS 281.501, subsection 4. The motion was put to a vote and passed four-one, with Commissioner Keele voting no.

The Commission then deliberated whether to impose a civil penalty pursuant to NRS 281.551. Commissioner Kosinski moved that the Commission impose a civil penalty of \$100. Commissioner Flangas seconded the motion. The motion passed three-two with Commissioners Capurro and Keele voting no.

Chairman Jenkins closed this agenda item.

A lunch recess was taken at approximately 12:45 p.m., and the meeting resumed at approximately 1:30 p.m.

Agenda Item 3 – Request for Opinion 06-57

Open session to hear testimony, receive evidence, deliberate, and render an opinion relating to a Request for Opinion submitted pursuant to NRS 281.511(2)(b), alleging that certain conduct of Wendy Rudder, Deputy Public Administrator, Lincoln County, violated the provisions of NRS 281.481(1), NRS 281.481(2), NRS 281.481(3), NRS 281.505.

Chairman Jenkins opened this agenda item. She then explained the hearing process and asked Mr. Hearn to provide an overview of the request for opinion. Mr. Whipple, Counsel for Ms. Rudder, made his opening statement.

Philip Dunleavy was the first witness called to testify, followed by Tina Osborn. Chairman Jenkins then asked staff to contact the witnesses that would testify by telephone. Joshua and Brittney Nay were contacted and testified.

A five-minute recess was taken. Nancy Escobedo then testified by telephone.

A recess was taken at 2:55 p.m., and the meeting reconvened at 3:05 p.m.

The Commission then called the last witness, Wendy Rudder. After testimony, Ms. Rudder provided a closing statement and the Commission went into deliberations.

With regard to the use of her storage facility, Commissioner Keele moved that the Commission find that there is no credible evidence of record to substantiate the alleged violation of NRS 281.481, subsection 1, and as a consequence thereof, moved that the charge be dismissed. Commissioner Capurro seconded the motion. The motion was put to a vote and passed unanimously.

The Commission then considered whether a violation of NRS 281.481, Subsection 2 had occurred. Had Ms. Rudder used her position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself, for any business entity in which she has a significant pecuniary interest or any person to whom she has a commitment in a private

capacity to the interest of that person by either storing personal property from the Creech estate at her storage facility and/or by employing her nephew and his wife to inventory and remove the Creech estate personal property and to clean out the apartment.

Commissioner Keele stated that the evidence of record clearly established that, if there was any violation, it was not unwarranted under Paragraph (b) of Subsection 2 of NRS 281.481. He further stated that Ms. Rudder had provided justification or an adequate reason for each of the things that she was alleged to have done that may have constituted a violation of the statute and, therefore, he moved that the allegation against Ms. Rudder, under NRS 281.481, Subsection 2, be dismissed. Commissioner Kosinski seconded the motion. The motion was put to a vote and passed unanimously.

The next possible violation was NRS 281.481, Subsection 3. Commissioner Kosinski moved that the Commission find that there was a violation of NRS 281.481, Subsection 3, and that Ms. Rudder did execute a contract between herself as the deputy public administrator and her office (B&W Wash N Store) for the use of the storage facility. Commissioner Flangas seconded the motion. The motion passed four-one with Commissioner Keele voting no.

The Commission then considered whether the violation of NRS 281.481, Subsection 3, was willful. Commissioner Kosinski moved that the Commission find that the conduct of Ms. Rudder was not willful. Commissioner Keele seconded the motion. The motion passed unanimously.

A five-minute recess was taken.

The final item of consideration was whether there was a violation of NRS 281.505, Subsection 1. Chairman Jenkins moved that the Commission find a violation of NRS 281.505 in that Ms. Rudder entered into a contract between a governmental agency and her private business without meeting the open competitive bidding prong of the exception in that statute. Commissioner Kosinski seconded the motion. The motion passed unanimously.

With regard to willfulness, Commissioner Kosinski moved that the Commission find that the violation of NRS 281.505, Subsection 1, was not willful. Ms. Rudder's acts lacked willfulness because she did not know and, under the circumstances in which she was hired, she had no reason to know, that her conduct would be a violation of the ethical standards. Commissioner Capurro seconded the motion. The motion passed unanimously.


The agenda item was closed.

Agenda Item 4 – Open session for public comment

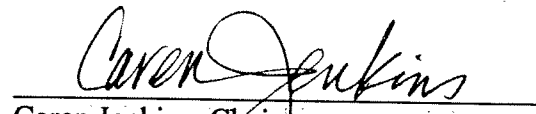
Chairman Jenkins opened the agenda item for public comment. No public comment was made, and the agenda item was closed.

Chairman Jenkins adjourned the meeting at 4:50 p.m.

Minutes transcribed by:


Emily H. Nunez, Office Manager

Minutes approved January 24, 2007


Caren Jenkins, Chairman